

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 1333 (Wieckowski) – As Amended May 25, 2018

**SENATE VOTE:** 25-12

**SUBJECT:** Planning and zoning: general plan: zoning regulations: charter cities

**SUMMARY:** Applies local planning and zoning requirements to charter cities. Specifically, **this bill:**

- 1) Requires a general plan of a charter city to be adopted by resolution of the legislative body of the city, or the planning commission if the charter so provides, which mirrors requirements in existing law for counties and general law cities.
- 2) Applies all provisions in Chapter 3 (Local Planning) of Division 1 of Title 7 of the Government Code to charter cities.
- 3) Applies all provisions in Chapter 4 (Zoning Regulations) of Division 1 of Title 7 of the Government Code to charter cities.
- 4) Exempts development agreements entered into by a charter city before July 1, 2018, from complying with state development agreement statutes.
- 5) Makes a number of findings and declarations that housing is a matter of statewide concern and not exclusively a municipal affair.
- 6) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

**EXISTING LAW:**

- 1) Allows cities that adopt charters to control their own municipal affairs, but on all other matters requires charter cities to follow general, statewide laws.
- 2) Allows a city to make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.
- 3) Requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include seven mandatory elements, including a housing element that establishes the locations and densities of housing, among other requirements. General plans must also either include an eighth element on environmental justice or include environmental justice components in the other elements of the general plan.
- 4) Requires a city or county's housing element to identify adequate sites for housing at all income levels, very low, low, moderate, and above moderate income, and must include rental housing, factory-built housing, mobile homes, and emergency shelters.

- 5) Requires each local jurisdiction to ensure that its housing element makes enough sites available to accommodate its share of the projected need for new housing — known as the regional housing need assessment (RHNA).
- 6) Requires local land use policies and decisions, including zoning, specific plans, development agreements, and subdivision map approvals, of general law cities (and counties) to be consistent with their general plan. However, charter cities are exempted from many provisions in law that apply to local planning and zoning ordinances, except where state law specifically states that it applies to charter cities.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Kennedy Commission v. City of Huntington Beach.* Most aspects of state law that influence the siting and permitting of lower-income housing explicitly apply to charter cities. However, a 2017 appellate court decision, *Kennedy Commission v. City of Huntington Beach*, 16 Cal App. 5th 841 (2017), challenged whether charter cities are required to comply with state laws regarding the adoption of specific plans even where an adopted specific plan results in development approvals that are inconsistent with a housing element that is approved by the Department of Housing and Community Development (HCD) as providing adequate lower-income housing. Specifically, in 2013, the City of Huntington Beach adopted an HCD-approved housing element that provided for affordable housing adequate to accommodate its RHNA. The housing element also referenced a specific plan that would contain some of the lower-income housing that would allow the City to meet its RHNA goals. However, responding to citizen concerns, in 2015 the City amended that specific plan to provide for fewer units of lower-income housing. HCD notified the City that because it had amended the specific plan in this manner, its housing element was no longer in compliance with state law. Several plaintiffs also sued over the adoption of the specific plan, seeking to invalidate it on the basis that state law provides that “no specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan.”

The court found that this consistency requirement does not apply to charter cities because Government Code Section 65700 specifically provides that certain portions of the Planning and Zoning law do not apply to charter cities, and the city had not adopted an ordinance or charter amendment requiring consistency. The City was therefore permitted to adopt a specific plan with zoning rules that are inconsistent with its adopted housing element, eliminating sites that were intended to accommodate affordable housing when originally approved by HCD.

This bill requires charter cities to follow the same laws on local planning and zoning as general law cities, and exempts development agreements entered into by a charter city before July 1, 2018, from complying with state development agreement statutes.

*Purpose of the bill:* According to the author, “A recent California appellate court decision, *Kennedy Commission v. City of Huntington Beach*, 16 Cal App. 5<sup>th</sup> 841 (2017), threatens to undermine California’s Housing Element Law, including critical reforms from the 2017 Housing Package. The broader impact of the court’s decision is that charter cities are exempt from a significant portion of planning and zoning obligations provided in each city’s housing element. SB 1333 will clarify that existing housing laws apply to California’s 121 charter cities by applying all local planning and zoning requirements to charter cities but exempting development

agreements entered into with a charter city before July 1, 2018, from complying with state development agreement statutes.”

*Arguments in Support:* Supporters argue that if not corrected, this court decision could mean charter cities are exempt from designating sufficient sites to accommodate their share of the regional housing need, implementing locally adopted housing element programs, adopting zoning designations or specific plans that are consistent with the city’s housing element.

*Arguments in Opposition:* Opponents argue that this bill would limit new housing projects because developers would hesitate to take a financial risk if the development agreement changes, compelled by state or federal law, and that the bill could make a deal unprofitable.

*Double referred:* This bill is double referred. It was heard in the Assembly Committee on Local Government and passed out on a vote of 5-2 on June 20.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Rural Legal Assistance Foundation (co-sponsor)  
Public Interest Law Project (co-sponsor)  
Western Center on Law and Poverty (co-sponsor)  
California Renters Legal Advocacy and Education Fund  
California YIMBY  
Non-Profit Housing Association of Northern California  
Resources for Community Development

### **Opposition**

County of Santa Barbara

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